

FILED

MAY 10 2001

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

U.S.D.C. MARTIN, W.VA. 5/10/01

MELISSA SMITH,

Plaintiff,

v.

Civil Action No. 3:01cv38
(From Circuit Court of Berkeley County,
W. Va. - Civil Action No. 00-C-644)

MATRIX LLC,
d/b/a CLEAN IT,
a foreign corporation, and
JAMES PEDUTO, individually and
as member and agent of Matrix LLC

Defendants.

NOTICE OF REMOVAL

This notice of removal by the defendant, Matrix, LLC d/b/a Clean It, and James Peduto, individually, respectfully state as follows:

1. On or about the 15th day of November, 2000, the above captioned action was commenced in the Circuit Court of Berkeley County, West Virginia. A copy of said Complaint is attached hereto as Exhibit A.

2. The Complaint alleges a violation of the West Virginia Wage Payment and Collection Act, and this is the sole basis for plaintiff's original Complaint against defendants.

3. Plaintiff moved the Circuit Court of Berkeley County for leave to file an amended complaint, said motion was granted by Order dated May 1, 2001 and the First Amended Complaint was ordered filed on May 1, 2001. A copy of said First Amended Complaint and the Order is attached here to as Exhibit B and Exhibit C.

4. In the First Amended Complaint, plaintiff has expanded her claims against defendants by adding an additional count for wrongful discharge from her employment in January 2000 and another count nominally alleging fraud.

5. In the First Amended Complaint, plaintiff also claims an entitlement to punitive damages in this matter.

6. Based upon the claims and damages sought in plaintiff's First Amended Complaint, this matter now involves an amount in controversy exceeding the sum or value of \$75,000.00, exclusive of interest and costs.

7. At the time of the commencement of this action, the plaintiff is and remains a citizen of the State of West Virginia.

8. At the time of the commencement of this action and at the time the First Amended Complaint was ordered filed, the defendant, Matrix, LLC, was and is a corporation incorporated in the State of New York and has its principal place of business outside the State of West Virginia, for the purposes of 28 U.S.C. § 1332.

9. At the time of the commencement of this action and at the time the First Amended Complaint was ordered filed, the individual defendant, James Peduto was and is a citizen of the State of New York.

10. This action is one over which the District Courts of the United States have original jurisdiction under the provisions of 28 U.S.C. § 1332 and is one which may be removed to this Court by the defendant by reason of diversity of citizenship between parties pursuant to the provisions of 28 U.S.C. 1441, et seq.

11. Venue is proper in the United States District Court for the Northern District of West Virginia, pursuant to 28 U.S.C. § 1331(a), the claim having arisen in Berkeley County, West Virginia.

12. Notice is further given that on the 9th day of May, 2001, the defendants mailed copies of this Notice of Removal to the Clerk of the Circuit Court of Berkeley County, West Virginia, and served the same upon counsel for the plaintiff, all as required by law.

Dated this 9th day of May, 2001.

DEFENDANTS, BY COUNSEL:



Gene W. Bailey, II (WV ID # 203)
Robert W. Trumble (WV ID #3804)

Counsel for defendants

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Of Counsel